

The June 13 Accident - Q's and A's

SOFA

1. Why does the Korean judicial system not have jurisdiction over American soldiers and other SOFA-status personnel?

The Korean judicial system does have primary jurisdiction in the vast majority of criminal cases involving USFK personnel. In 2001, for example, 82% of all offenses committed by USFK personnel in Korea were subject to Korean jurisdiction.

2. When does the Korean judicial system not have jurisdiction?

The Korean judicial system does not have jurisdiction in only two narrow types of offenses:

- Offenses perpetrated by SOFA personnel solely against the property or security of the U.S. or against a SOFA-status victim
- Offenses committed in the performance of official duty (as was the case with the June 13th accident). This provision is identical in every U.S. SOFA in the world. (Where the ROK has a SOFA agreement with another country, the ROK military has exclusive jurisdiction over its personnel in all cases.)

3. Who determines whether the accused was on duty?

The SOFA gives Korean authorities greater participation in the "official duty" decision than any other US ally; however, the final decision is made by a U.S. general officer.

4. How does the Korean military justice system, which governs the ROK military, compare with the SOFA, which governs the U.S. military?

The Korean military justice system is completely different from the SOFA which governs U.S. military personnel. Korean civilian courts have jurisdiction in the great majority of criminal cases involving SOFA personnel, but ROK soldiers are never tried by Korean civilian courts. If the driver or track commander had been a ROK soldier, including a KATUSA, he would have been tried by ROK military courts-martial, not the civilian criminal courts.

5. How does this compare with Korean soldiers serving in other countries?

Where the ROK has a SOFA agreement with another country, the ROK military has exclusive jurisdiction over its personnel in all cases.

Accountability for the Accident

6. Why has no one accepted responsibility for the accident?

The U.S. has accepted complete responsibility, including civil accountability, for this accident. The Commander of U.S. Forces Korea has stated publicly that ultimately he and his command were responsible. In addition, as further evidence of U.S. willingness to demonstrate accountability, responsibility, and remorse over the tragedy, the U.S. took the following steps:

- The Eighth U.S. Army Commander, Lt. Gen. Daniel R. Zanini, immediately apologized to the families through an 8th U.S. Army Press Release the day the accident occurred (June 13). He reiterated his public apology several times before his retirement on November 5.
- The following U.S. government and military officials have made public apologies to the Korean people:
 - George W. Bush, President of the United States of America;
 - Ambassador Thomas Hubbard, U.S. Ambassador to Korea;
 - Secretary of State Colin Powell;
 - Secretary of Defense Donald Rumsfeld;

- Gen. Leon J. LaPorte, Commander of USFK;
- Maj. Gen. Russell Honore, former Second Infantry Division Commander;
- Deputy Secretary of State Richard Armitage;
- Under Secretary of State John Bolton;
- Under Secretary of Defense Douglas Feith;
- Assistant Secretary of State James Kelly; and
- Sergeant Fernando Nino and Sergeant Mark Walker, the two soldiers who operated the vehicle.
- The Second Infantry Division Commander, the Second Infantry Division Chief of Staff, and the driver of the vehicle visited the families to apologize personally.
- USFK worked to ensure just compensation was paid to the families. Initial solatia (expression of sympathy) payments of one million won for each family were made on September 11. Both families accepted approximately 195 million won each on September 13.
- Hundreds of soldiers in the 2nd Infantry Division participated in a candlelight vigil to honor the girls at Camp Howze on June 18.
- Soldiers donated more than \$22,000 which was presented to the two families through the Red Cross.
- Other private donations from the American community in Korea totaling more than \$30,000 were received to construct a memorial to the two girls.
- In short, Americans - military, civilian, official - have accepted responsibility and apologized repeatedly for this tragic accident.

7. Why has no one been punished when two young girls died?

Following joint investigations,

- Charges of criminal negligence were brought against the two soldiers who operated the vehicle involved in the accident.
- Adverse administrative actions were also taken against individuals in the chain of command.
- It is important to remember that in the U.S. military judicial system, as well as in the U.S. judicial system in general, there is a distinction between holding someone "criminally responsible" and being "responsible."
- USFK held two trials in which impartial jury panels examined all the evidence to determine whether or not the accident was caused by criminal negligence. The two panels separately found that the soldiers were not proven to be criminally negligent beyond a reasonable doubt, the same standard of proof used in Korean military and civilian courts.

8. When will American military forces be withdrawn from Korea?

American forces will remain in the Republic of Korea as long as the governments and peoples of both Korea and the United States see it in their national interest for the troops to remain. If the government and people of either country decide that the U.S. military presence no longer serves their interests, the troops will be withdrawn, as was done in France and in the Philippines.

9. What has been done to prevent another such accident?

- USFK has formed a joint task force with the Korean Ministry of National Defense, the Ministry of Foreign Affairs and Trade, the Ministry of Construction and Transportation, and the Ministry of Justice. The task force will clarify the definition of authorized training areas in order to ensure the safety of Korean civilians. It will also enable USFK to better understand Korean perceptions and examine training and movement procedures to prevent similar accidents in the future.
- The 2nd Infantry Division has taken all vehicles of the specific type involved in the accident off public roads. These vehicles will be moved on transport trucks and there will be front and back guide vehicles for all track and oversized vehicle movements.
- Detailed notification will be provided to local officials, ensuring that they are well informed about future training activities.
- During training exercises, unit command posts will closely monitor and control vehicle movements.
- Two-way convoys on two-lane roads are henceforth prohibited.
- Intercom systems are being upgraded to improve communication between vehicle drivers and vehicle commanders.
- Additional mirrors and other vehicle reconfigurations will give drivers greater fields of vision.
- Surveys are also being conducted to determine whether any further changes in policy or roadway construction procedures are required to prevent future mishaps.

10. What steps are you taking to amend the SOFA? Isn't the real problem the fact that the SOFA is unfair?

- There are no changes that could possibly be made to the U.S.-ROK Status of Forces Agreement that would have prevented this accident.
- Had this accident occurred in Japan, Germany, or Turkey, the provisions of our bilateral SOFA agreements with these countries would have resulted in this accident being handled in the same way.
- The U.S.-ROK SOFA was revised to both government's satisfaction in 2001. The U.S.-ROK SOFA is, in all significant respects, equal to those we have concluded with some 80-plus countries around the world.
- The U.S. government regards certain core principles and protections - including the principle of primary jurisdiction in the case of on-duty offenses - as essential to our ability to station forces overseas. The U.S. government is not willing to change these core principles.
- The U.S. is always willing to work with host governments to improve the operation of our Status of Forces Agreement, and in the past we have taken numerous steps in this area in improving the U.S.-ROK SOFA.

- On December 12, the U.S. and ROK agreed to establish a Special Task Force to review the operation of the U.S.-ROK SOFA, with an eye towards recommending additional ways in which the operation of that agreement can be improved.

U.S. Military Courts-Martial Fact Sheet

Judge vs. a Jury Panel

- The Uniform Code of Military Justice (the law governing U.S. military service members) allows the accused in this type of court-martial to choose whether to be tried by a military judge or a panel of military members.

- Each soldier chose to be tried by a panel of military members.

Jury Panel Composition:

- Panel members are the military equivalent of a civilian jury. In a general court-martial, the minimum number of panel members is five.
- Panel members must be active-duty U.S. military members who also are subject to the jurisdiction of the Uniform Code of Military Justice.
- Civilians and KATUSAs cannot be panel members because they are not subject to the Uniform Code of Military Justice. Although KATUSAs serve each day in U.S. military units, they are only subject to the Korean military judicial system.

Jury Panel Selection:

- In both of the recent trials, five officers and five enlisted soldiers were selected from a pool of potential panel members.
 - Defendants have the right to be tried by a panel, and enlisted soldiers can request that at least 1/3 of the panel be enlisted soldiers.
- Panel members are questioned about their knowledge of the case and other pertinent issues to determine if they will be impartial.
 - The prosecution and the defense can remove potential panel members if their answers make them seem biased towards either the prosecution or defense, but there must be at least 5 members on the final panel.

Testimony the panel can consider:

- The law allows panel members to hear testimony by witnesses regarding the facts. Opinion testimony is substantially limited. For example, a witness cannot testify about something about which he or she lacks personal knowledge. If a witness is qualified as an expert witness, he or she may offer an opinion based on information provided to him or her.